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2013 IL App (3d) 110274-U

Order filed April 30, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Plaintiff-Appellee,	)	McDonough County, Illinois,
	)	
v.	)	Appeal No. 3-11-0274
	)	Circuit No. 10-CF-154
	)	
MONSCONI MAURICE FEEMSTER,	)	Honorable
	)	Patricia A. Walton and Steven R. Bordner,
Defendant-Appellant.	)	Judges, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Wright and Justice Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* (1) The evidence was sufficient to find defendant guilty of the offense. (2) The trial court did not err when it admitted a statement by defendant into evidence. (3) The court did not err when it allowed the prosecutor to use PowerPoint slides during closing arguments. (4) We remand the cause so the circuit court can determine whether defendant's DNA was registered in the database.
- ¶ 2 Defendant, Monsconi Maurice Feemster, was convicted of unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(c) (West 2010)), and sentenced to a term of five years in prison. Defendant appeals, arguing that: (1) the evidence was not sufficient to prove

him guilty; (2) the trial court abused its discretion when it admitted a statement made by defendant prior to his arrest; (3) the court erred when it allowed the prosecutor to make a PowerPoint presentation during closing argument; and (4) a \$200 deoxyribonucleic acid (DNA) analysis fee was improperly assessed. We affirm defendant's conviction, but remand the cause so that the trial court can determine whether defendant's DNA was registered in the database at the time of sentencing.

¶ 3

### FACTS

¶ 4 Following his arrest on June 30, 2010, the State charged defendant with unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(c) (West 2010)). Prior to trial, the State filed a motion *in limine*, requesting that it be permitted to use PowerPoint slides during closing arguments. Defendant opposed the motion, arguing in part that the presentation contained a page titled "facts" and would therefore interfere with the fact-finding function of the jury. At the conclusion of the hearing, the court ruled that the State could present a PowerPoint presentation during closing arguments.

¶ 5 Defendant also made a motion *in limine*, seeking to bar statements overheard by a member of the Macomb police department on April 6, 2010. On that day, while standing on a platform at a train station, an off-duty police officer heard defendant say, "My phone has been blowing up all weekend with calls from people looking for the stuff in Macomb. \*\*\* People can't seem to get enough of it." In ruling that the statement could be used by the State, the court noted that defendant's comments could be related to the crime charged. It stated that it was for the jury to determine whether that was the case, but in any event, it would not bar the statements.

¶ 6 The cause proceeded to a jury trial. The State presented into evidence the statements

made by defendant on April 6, 2010. Other evidence established that on June 30, 2010, defendant and Ashley Watt were pulled over after Ashley failed to stop at a stop sign. The vehicle was registered to Vola Watt. Once the car was pulled over, the officer noticed defendant and Ashley moving around as if they were reaching underneath the seat. Ashley appeared very nervous. During the stop, the police walked a canine around the car, and it alerted to the presence of drugs. Defendant told the officers that he had smoked a cannabis blunt about 15 minutes prior to the stop. The officers searched the vehicle and found a cannabis blunt underneath the driver's seat. Defendant and Ashley were arrested, and defendant told the officers that he would take the charge for the cannabis.

¶ 7 After placing defendant and Ashley under arrest, the officers continued their search. When they opened the trunk, they found a purse containing currency and 14 bags of cannabis. The purse also contained documents and a credit card belonging to Ashley. An officer testified that normally an individual would only possess one or two bags if it was for personal use and that the multiple bags, plus the currency, led them to believe the drugs were intended for sale. When the officers returned to defendant and Ashley, defendant said, "there should only be a couple of bags in there." Defendant then informed the officers that "the cannabis is not his, but he will take the charge for it."

¶ 8 During closing arguments, the State used a PowerPoint presentation. The slides contained facts from the case in an attempt to prove possession, constructive possession, and intent to deliver. To that end, facts were separated into each category in an effort to show the jury what facts were important for each element of the crime charged.

¶ 9 The jury found defendant guilty of unlawful possession of cannabis with intent to deliver.

Defendant filed a motion for a new trial, claiming that the court erred when it allowed the jury to hear the statements made by him on April 6, 2010. The court denied the motion. Prior to sentencing, a presentence investigation report was filed. It showed that defendant had been ordered to submit a DNA sample following a conviction for unlawful delivery of a controlled substance on September 10, 2004. However, it did not say whether defendant's DNA was currently registered in the DNA database. The trial court sentenced defendant to a five-year term of imprisonment and ordered him to provide a DNA sample and pay a \$200 DNA analysis fee.

¶ 10

#### ANALYSIS

¶ 11

#### I

¶ 12 First, defendant argues that the evidence was not sufficient to prove him guilty beyond a reasonable doubt of unlawful possession of cannabis with intent to deliver. When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry defendant; rather, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985).

¶ 13 To prove a defendant guilty of unlawful possession of cannabis, the State must show that defendant had knowledge of the presence of the cannabis and that defendant had the cannabis in his immediate and exclusive possession or control. *People v. Schmalz*, 194 Ill. 2d 75 (2000).

Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784 (2010).

Constructive possession may exist even where an individual is not in physical control of the item, provided that the individual once had physical control with intent to exercise control on their own behalf, and no other person had obtained possession and the item was not abandoned.

*People v. Adams*, 161 Ill. 2d 333 (1994). Possession may be joint or shared yet still be exclusive. *People v. Moreno*, 334 Ill. App. 3d 329 (2002). A conviction will only be overturned where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532 (1999).

¶ 14 In this case, sufficient evidence was presented that would allow a rational trier of fact to find beyond a reasonable doubt the essential elements of unlawful possession of cannabis with intent to deliver. Evidence established that defendant and Ashley were pulled over in a vehicle in which drugs were found. Defendant admitted to smoking a cannabis blunt prior to the stop and told the officers he would take the charge for the blunt they found under the driver's seat. After the bags of cannabis were found in the purse, defendant said, "there should only be a couple of bags in there[,]" an indication that defendant had knowledge of the drugs. Defendant then said that the cannabis was not his but that "he w[ould] take the charge for it[,]" further indicating that he had control over the cannabis and consciousness of his guilt. Lastly, evidence established that the drugs were found in a manner that suggested they were intended for sale.

¶ 15 Defendant contends that this case is similar to *People v. Scott*, 367 Ill. App. 3d 283 (2006). In *Scott*, the defendant and a codefendant, Angela Watson, were caught retrieving drugs from a mailbox. The evidence established that Watson maintained possession of the key to the mailbox and was the only one to open the mailbox. The appellate court found that defendant did not have the capability to maintain control and dominion over the drugs in the mailbox, therefore, the State failed to prove that he constructively possessed the drugs within. *Id.* While we note that this case is similar in that the drugs were found in a vehicle not owned by defendant and within a purse apparently owned by Ashley, it is distinguishable because defendant told the

officers that he would take the charge for the drugs. There was no such admission in the *Scott* case. Therefore, when viewed in a light most favorable to the prosecution, the evidence presented in this case is sufficient to allow a rational trier of fact to find beyond a reasonable doubt the essential elements of unlawful possession of cannabis with intent to deliver.

¶ 16

## II

¶ 17 Defendant next argues that the court abused its discretion when it ruled against his motion *in limine* and allowed the State to present evidence that on April 6, 2010, nearly three months before his arrest, defendant was overheard saying, "My phone has been blowing up all weekend with calls from people looking for the stuff in Macomb. \*\*\* People can't seem to get enough of it." In allowing the evidence, the trial court stated that defendant's statement was relevant because it may have concerned the offense charged in this case.

¶ 18 Rulings on evidentiary matters, including motions *in limine*, are within the sound discretion of the trial court. *People v. Harvey*, 211 Ill. 2d 368 (2004). An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, unreasonable, or when no reasonable person would take the same view as the court. *People v. Smith*, 406 Ill. App. 3d 747 (2010). Evidence is relevant if it has the tendency to make the existence of a fact that is important to the determination of a case more or less probable than it would be without the evidence. *People v. Decaluwe*, 405 Ill. App. 3d 256 (2010).

¶ 19 Here, defendant's statement did have the potential to prove that he controlled the cannabis and intended to sell it. Although the statement occurred almost three months before his arrest and did not expressly mention cannabis, the statement could have been part of the criminal activity charged in this case. Whether it was in fact part of the criminal activity became a

question for the jury, and the trial court did not abuse its discretion when it admitted the statement and allowed the jury to make that determination.

¶ 20

III

¶ 21 Defendant further argues that the trial court abused its discretion when it allowed the State to use a PowerPoint presentation during closing arguments. Defendant claims that the slides, which highlighted certain facts, were inappropriate summaries of evidence and invaded the fact-finding province of the jury. The regulation of the substance and style of closing argument lies within the trial court's discretion. *People v. Meeks*, 382 Ill. App. 3d 81 (2008). The admission of demonstrative evidence also lies within the sound discretion of the trial court. *People v. Holman*, 402 Ill. App. 3d 645 (2010).

¶ 22 Here, defendant does not cite any facts in the presentation that were misstated or not found in the evidence. Therefore, we are left to determine whether the trial court abused its discretion when it allowed a PowerPoint presentation that listed facts found in the evidence.

¶ 23 We do not believe the court's decision was an abuse of discretion. First, many of the cases cited by defendant involved the use of demonstrative exhibits during the presentation of evidence, not during closing arguments. See, e.g., *Holman*, 402 Ill. App. 3d 645; *People v. Kinion*, 105 Ill. App. 3d 1069 (1982); *People v. Williams*, 161 Ill. 2d 1, 66 (1994). In this case, the presentation was used only in closing arguments, and therefore any concern about the commenting on or interpretation of evidence as it is given was not present here. Second, during closing arguments, prosecutors are allowed considerable latitude and have the right to comment on the evidence and draw all legitimate inferences. *People v. Groves*, 287 Ill. App. 3d 84 (1997). In that vein, a prosecutor may state facts so long as they are drawn from the evidence. *People v.*

*Rivera*, 277 Ill. App. 3d 811 (1996). Here, the facts were drawn from the evidence, and the court had broad discretion in regulating the manner of closing argument. Therefore, we conclude that the trial court did not abuse its discretion by allowing the State to present those facts in a PowerPoint presentation.

¶ 24

#### IV

¶ 25 Finally, defendant argues that the \$200 DNA analysis fee should be vacated because he had previously been ordered to pay the fee. Section 5-4-3 of the Unified Code of Corrections mandates that all individuals convicted of an offense that is classified as a felony under Illinois law after January 1, 1998, submit to the taking, analyzing, and indexing of their DNA, and the payment of an analysis fee. 730 ILCS 5/5-4-3(a), (j) (West 2010). However, a defendant is only required to submit to and pay for the DNA assessment when he is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 26 Here, the record indicates that defendant had been convicted of a felony after January 1, 1998, and had been required to submit a DNA sample following that conviction. However, it does not indicate whether defendant's DNA was actually registered in the database or whether it was currently registered at the time of sentencing. Rather than presume that defendant's DNA was in the database, we believe that the better course would be to remand the cause to the trial court to determine whether defendant's DNA was currently registered at sentencing. If defendant's DNA was registered, then the DNA analysis fee should be vacated pursuant to *Marshall*, 242 Ill. 2d 285. However, if the trial court finds that defendant's DNA was not in the database at the time of sentencing, then the \$200 DNA analysis fee should not be disturbed.

¶ 27

#### CONCLUSION

¶ 28 The judgment of the circuit court of McDonough County is affirmed in part, and the cause is remanded for further proceedings.

¶ 29 Affirmed in part and remanded.